

OU #1  
Cooley

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF PORTSMOUTH, TOWN OF NORTH  
HAMPTON, TOWN OF NEWINGTON,  
BOOTH FISHERIES CORPORATION,  
BROWNING-FERRIS INDUSTRIES OF  
NEW HAMPSHIRE, INC., COASTAL  
ENVIRONMENTAL SYSTEMS, INC.,  
CUSTOM POOLS, INC., ERIE SCIENTIFIC  
COMPANY, GARY W. BLAKE, INC.,  
GTE PRODUCTS CORPORATION, JET-LINE  
SERVICES, K.J. QUINN & CO., INC.,  
K-MART CORPORATION, NEWINGTON MIDAS  
MUFFLER, MOBIL OIL CORPORATION,  
MONTGOMERY WARD & CO., INC.,  
NEW ENGLAND TELEPHONE & TELEGRAPH  
COMPANY, NORTHERN UTILITIES, INC.,  
PIKE ASSOCIATES, INC., R. M.  
PHILBRICK TRUCKING CO., INC.,  
POST MACHINERY COMPANY, INC.,  
PUBLIC SERVICE COMPANY OF NEW  
HAMPSHIRE, S & H PRECISION MFG.  
CO., INC., SANEL AUTO PARTS, INC.,  
GEORGE FRISBEE, INDIVIDUALLY AND  
D/B/A SEACOAST TRUCKING AND MOVING  
COMPANY, SEACOAST VOLKSWAGEN, INC.,  
SIMPLEX WIRE AND CABLE COMPANY,  
UNITED TECHNOLOGIES CORPORATION,  
WASTE MANAGEMENT OF MAINE, INC.,  
WASTE MANAGEMENT OF NEW HAMPSHIRE,  
INC.,

Defendants.

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CIVIL ACTION NO.

Superfund Records Center

SITE: Cooley

BREAK: 10.8

OTHER: \_\_\_\_\_

STATE OF NEW HAMPSHIRE,

Plaintiff,

v.

CITY OF PORTSMOUTH, TOWN OF NORTH  
HAMPTON, TOWN OF NEWINGTON,

CIVIL ACTION NO.

BOOTH FISHERIES CORPORATION, )  
BROWNING-FERRIS INDUSTRIES OF )  
NEW HAMPSHIRE, INC., COASTAL )  
ENVIRONMENTAL SYSTEMS, INC., CUSTOM )  
POOLS, INC., DEPARTMENT OF THE AIR )  
FORCE--PEASE AIR FORCE BASE, )  
DEPARTMENT OF THE NAVY--PORTSMOUTH )  
NAVAL SHIPYARD, ERIE SCIENTIFIC )  
COMPANY, GARY W. BLAKE, INC., GTE )  
PRODUCTS CORPORATION, JET-LINE )  
SERVICES, K.J. QUINN & CO., INC., )  
K-MART CORPORATION, NEWINGTON MIDAS )  
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SIMPLEX WIRE AND CABLE COMPANY, )  
UNITED TECHNOLOGIES CORPORATION, )  
WASTE MANAGEMENT OF MAINE, INC., )  
WASTE MANAGEMENT OF NEW HAMPSHIRE, )  
INC., )

Defendants. )

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA and  
STATE OF NEW HAMPSHIRE,

Plaintiffs,

v.

City of Portsmouth, New  
Hampshire, et. al.,

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks:

(1) performance of studies and response work by the Defendants at the Site in conformity with the Record of Decision (as defined below) and the National Contingency Plan, 40 C.F.R. Part 300 as amended) ("NCP"); (2) declaration of Settling Defendants' liability for Future Response Costs and certain Oversight Costs;

and (3) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Hampshire (the "State") on March 15, 1991 of negotiations with potentially responsible parties regarding the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of New Hampshire (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants in that action are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and New Hampshire RSA 147-B for (1) performance of response work at the Site, including post remedial monitoring and operation and maintenance; (2) declaration of Defendants' liability for Future Response Costs and certain Oversight Costs; and (3) such other relief as the Court finds appropriate.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustee on January 28, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

F. The Settling Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiffs, and

the Settling Federal Agencies, as defined below, do not admit any liability to the State or to the Settling Defendants arising out of the transactions or occurrences alleged in the complaints.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication for final listing in the Federal Register on June 10, 1986, 51 Fed. Reg. 21073.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the State, under a cooperative agreement with EPA, commenced on May 6, 1986, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA issued a Remedial Investigation ("RI") Report on October 31, 1988, and issued a Feasibility Study ("FS") Report on March 9, 1990.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the issuance of the FS Report and of the proposed plan for remedial action on March 9, 1990 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. EPA received comments on the FS and the Proposed Plan from members of the public and from some of the Settling Defendants. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.



K. The decision by EPA on the remedial action to be implemented at the Site is embodied in the Record of Decision ("ROD"), executed on June 28, 1990, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final and the proposed plan as well as a responsiveness summary to the public comments. Notice of the ROD was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Settling Defendants.

M. The Remedial Action selected by EPA in the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President solely for the purposes of Section 113(j) of CERCLA.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

O. The parties agree that the remedy selected in the ROD as adopted by EPA and embodied herein is protective of the public health and the environment and is consistent with CERCLA and the National Contingency Plan ("NCP").

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345; 42 U.S.C. §§ 9606, 9607 and 9613(b); 42 U.S.C. § 6973; and pendent jurisdiction over the claims asserted by the State arising under the laws of New Hampshire. This Court also has personal jurisdiction over the Settling Defendants. For the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, and the State, and Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor and subcontractor hired to perform the Work required by this Consent Decree and shall condition all contracts and subcontracts entered into hereunder upon

performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the Work undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Thus, as to acts or omissions of contractors, the Settling Defendants shall not assert a defense based upon Section 107(b)(3) of CERCLA, 42 U.S.C. §9607(b)(3), provided, however, that this shall not affect the rights of Settling Defendants as against their contractors or sub-contractors.

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Additional Work" shall mean all activities required by Section VII herein.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42

U.S.C. §§ 9601 et. seq.

"Cleanup Levels" shall mean the numerical criteria selected to reflect the degree of cleanup to be achieved in the soil, sediments and groundwater at the Site. These criteria are set forth in Sections C.1 and E.1 of the SOW.

"Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday or Federal legal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal legal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"NHDES" shall mean the New Hampshire Department of Environmental Services and any successor departments or agencies of the State.

"Future Response Costs Other than Oversight Costs" (hereinafter "Future Response Costs") shall mean all direct and indirect costs related to this Consent Decree incurred by the United States and the State not inconsistent with the NCP following the lodging of this Consent Decree, other than

Oversight Costs as defined below. Future Response Costs shall include, but not be limited to costs incurred pursuant to Section X (Access), costs of performing any portion of the Work (including but not limited to the development of plans, reports and other items pursuant to Section XII, Additional Work pursuant to Section VII, costs of Periodic Review pursuant to Section VIII and costs of Endangerment and Future Emergency Response pursuant to Section XVII), costs of enforcing this Consent Decree, and any other costs related to this Consent Decree other than Oversight Costs: including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

"Institutional Controls" shall mean deed restrictions and other equivalent requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater at the Site prior to the attainment of the Performance Standards; 2) to limit human or animal exposure to Waste Material; 3) to ensure non-interference with the performance of the Work; and (4) to ensure the integrity and effectiveness of the Work.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required pursuant to this Consent Decree and the Scope

of Work (SOW) to maintain the effectiveness of the Remedial Action, including all activities set forth in the Operation and Maintenance Plan developed pursuant to this Consent Decree and the Scope of Work (SOW).

"Oversight Costs" means the direct and indirect costs incurred by the United States and the State after the lodging date of this Consent Decree for review, inspection, analysis and verification of the performance of the Work required under the terms of this Consent Decree, including but not limited to payroll, travel, contractor and laboratory costs incurred for this purpose. Oversight costs shall include the costs of reviewing plans, reports, or other items submitted by Settling Defendants pursuant to this Consent Decree, but shall not include any costs incurred by EPA to develop plans, reports, or other items pursuant to Paragraph 40, Section XII (Submissions Requiring Agency Approval) of this Consent Decree. Oversight shall include the cost of any QA official required by EPA independent of the Supervising Contractor to conduct a QA program during the construction phase of the project. Oversight costs shall not include costs incurred by the United States or the State in performing any obligations pursuant to Section X (Access), Paragraph 91 of Section XXIV (Covenants Not to Sue by Plaintiffs), or Paragraph 53 of Section XVII (Endangerment and Future Emergency Response). Oversight costs shall also not include any costs incurred for enforcement of this Consent Decree.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of New Hampshire, and the Settling Defendants.

"Past Response Costs" shall mean all costs incurred in connection with Operable Unit 1, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and interest and indirect costs, that the United States and the State incurred not inconsistent with the NCP with regard to the Site prior to lodging of this Consent Decree.

"Performance Standards" shall mean those cleanup standards, cleanup levels, treatment standards, institutional controls, and other substantive requirements, criteria or limitations set forth in the ROD and in Sections C. D. and E. of the SOW.

"Plaintiffs" shall mean the United States and the State of New Hampshire.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to Operable Unit 1 at the Site signed on June 28, 1990, by the Regional Administrator, EPA Region I, all attachments thereto, and the Explanation of Significant Differences or "ESD" dated March 22, 1991.

"Remedial Action" shall mean all those activities, except for Remedial Design and Operation and Maintenance, but including

Additional Work required under Section VII hereof, to be undertaken by the Settling Defendants pursuant to this Consent Decree.

"Remedial Action Work Plan" shall mean the document submitted by the Settling Defendants for implementation of Remedial Action activities required under this Consent Decree and the Scope of Work (SOW) and any modifications thereto in accordance with this Consent Decree and the SOW.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the pre-design and final plans and specifications for the Remedial Action pursuant to the Initial Remedial Design Steps, the Pre-Design Steps and the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by the Settling Defendants for implementation of Remedial Design activities other than Pre-Design activities required under this Consent Decree and the SOW and any modifications thereto in accordance with this Consent Decree and the SOW.

"Scope of Work" or "SOW" shall mean the scope of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix D (Settling Defendants), and does not include the Settling



**Federal Agencies.**

"Settling Federal Agencies" shall mean the United States Air Force and the United States Navy.

"Site" shall mean the facility where disposal of Waste Material was conducted, and where Waste Materials have come to be located. The Site is located at 480 Breakfast Hill Road, in North Hampton, Rockingham County, New Hampshire and is depicted generally on the map attached as Appendix C.

"State" shall mean the State of New Hampshire.

"Supervising Contractor" shall mean the contractor retained by the Settling Defendants to carry out the Work under this Consent Decree and approved by EPA pursuant to Paragraph 10.

"United States" shall mean the United States of America, including its agencies, departments and instrumentalities, including, but not limited to, the Settling Federal Agencies.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "hazardous waste" under section 1004(5) of RCRA, 42 U.S.C. § 6903(5); (4) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (5) any "hazardous material" under New Hampshire RSA 147.B:2.

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, including, but not limited to, Remedial Design, Remedial Action, Operation and Maintenance and any Additional Work activities, except those

required by Section XXIX (Retention of Records).

## V. GENERAL PROVISIONS

### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of Waste Material at and from the Site by the investigation, development, design and implementation of the Remedial Action and Operation & Maintenance for Operable Unit 1 at the Site by the Settling Defendants, and to reimburse Future Response Costs and certain Oversight Costs incurred by the Plaintiffs related to Operable Unit 1.

### 6. Commitments by Settling Defendants and Settling Federal Agencies

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, including, but not limited to, the SOW and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States and the State for Future Response Costs and certain Oversight Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent

Decree, the remaining Settling Defendants shall complete all such requirements.

c. Settling Defendants shall assume any and all liability arising from or relating to their acts or omissions in the performance of the Work or their failure to perform fully or complete the requirements of this Consent Decree.

d. Subject to the availability of properly appropriated funds, and in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341, the Settling Federal Agencies shall arrange for payment to the EPA Hazardous Substances Superfund and make payment into the Coakley Landfill Superfund Site Trust Fund in accordance with this Consent Decree.

e. In order to expedite the Remedial Design at the Site and performance of certain other obligations under this Consent Decree, Settling Defendants agree to select the Supervising Contractor and the Remedial Design Contractor if not the same as the Supervising Contractor under Section VI, perform Remedial Design under Section VI, comply with Reporting Requirements as they relate to Remedial Design under Section XI, provide Site Access for Remedial Design under Section X, establish a Trust Fund account under Section XV as necessary for Remedial Design and perform any and all other obligations under this Consent Decree necessary to perform Remedial Design. These commitments are a contractual obligation effective upon the lodging of this Consent Decree with the Court. These obligations shall be enforceable as a matter of contract law regardless of

when or whether the Decree is entered by the Court. All Future Response Costs and certain Oversight Costs incurred prior to the entry of the Consent Decree shall be reimbursed after entry in accordance with Section XVIII.

7. Compliance With Applicable Law

All Work undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all federal and state laws and regulations and all applicable or relevant and appropriate public health and environmental requirements identified in the ROD. The parties agree that the Work conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. On-site means a landfill area and wetlands containing contaminated sediments described in the ROD and SOW necessary for remediation under Operable Unit 1 as well as all suitable areas in very close proximity to the contamination necessary for implementation of the response action, and the Coakley property. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall timely submit applications and take all other actions necessary to obtain all such permits or approvals.

b. If the Settling Defendants establish that they

qualify for Force Majeure relief pursuant to the standards and requirements of Paragraphs 66 through 69 of Section XXI (Force Majeure), the Settling Defendants shall be entitled to such relief as is provided pursuant to the provisions of that Section for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work attributable to Force Majeure.

c. All hazardous waste, as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), that Settling Defendants generate in performance of the Work shall be managed by the Settling Defendants in accordance with the NCP, including but not limited to the RCRA requirements relating to the use and signing of manifests.

d. Settling Defendants shall include in all contracts or subcontracts entered into for Work, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

e. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Within 15 days after the entry of this Consent Decree, the Settling Defendant(s) shall record a notice of the existence of this Consent Decree with the Registry of Deeds, Rockingham County, State of New Hampshire with appropriate reference to the

relationship of this Consent Decree to the Coakley Landfill property. Settling Defendants shall not use any portion of the Site in any manner that EPA determines would adversely affect the integrity of any containment system, treatment system or monitoring system installed pursuant to this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Remedial Design and Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Additional Work), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within 21 days after the lodging of this Consent Decree, Settling Defendants shall submit to EPA and the State a list, in writing, of the name, title, and qualifications of all contractor(s) from whom Settling Defendants will solicit proposals to be the Supervising Contractor and if a different person, the Remedial Design Contractor. EPA will, after reasonable opportunity for review and comment by the State, issue, in writing, a notice of the names of the contractor(s) it disapproves or an authorization to proceed.

b. If EPA disapproves of any listed contractor(s) as Supervising Contractor or Remedial Design Contractor, Settling Defendants shall either proceed with respect to the remaining

contractors or submit to EPA and the State a second list of contractors, including the qualifications of each contractor, that would be acceptable to Settling Defendants within 30 days of receipt of EPA's disapproval of the contractor(s) previously listed. EPA after reasonable opportunity for review and comment by the State, will provide written notice of the names of the contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants shall select any approved contractor(s) from that second list and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor or Remedial Design Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor or Remedial Design Contractor performs, directs, or supervises any Work under this Consent Decree. If EPA fails to provide written notice of its authorization to proceed or disapproval of the names on the list as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XXI (Force Majeure) hereof.

11. Remedial Design

- a. Within 133 days after EPA issues the authorization to

proceed pursuant to Paragraph 10, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan, including a Contingency Plan, for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. Within 217 days after EPA issues the authorization to proceed, Settling Defendants shall submit to EPA and the State a Project Operation Plan, a Pre-Design Work Plan and an Environmental Monitoring Plan for the design of the Remedial Action at the Site. Within 182 days after EPA, after a reasonable opportunity for review and comment by the State, approves the Project Operation Plan, the Pre-Design Work Plan and the Environmental Monitoring Plan, the Settling Defendants shall submit to EPA and the State a Pre-Design Report. The Pre-Design Report shall include the results of the investigations set forth in the Pre-Design Work Plan. Within 42 days after the Settling Defendants receive approval of the Pre-Design Report, Settling Defendants shall submit to EPA and the State an updated Health and Safety Plan and a Remedial Design Work Plan ("Remedial Design Work Plan"). The Project Operation Plan, the Pre-Design Work Plan, the Environmental Monitoring Plan and the Remedial Design Work Plan shall provide for pre-design and design of the remedy set forth in the ROD in accordance with the SOW and, upon their approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.



b. The Project Operation Plan, the Pre-Design Work Plan and the Environmental Monitoring Plan shall include plans and schedules for all pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a field sampling and analysis plan; (2) a Quality Assurance/Quality Control Plan (QA/QC) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis); (3) an updated Health and Safety Plan; (4) a Project Management Plan; (5) Assessments (including consolidation of sediments, capping of landfill, active interior gas collection/recovery system, groundwater extraction system, groundwater treatment system); and (6) monitoring programs (including groundwater, air and wetlands).

c. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a Construction Quality Assurance Project Plan ("CQAPP"); (2) a preliminary design submittal; (3) an intermediate design submittal; (4) a pre-final design submittal; (5) a final design submittal; and (6) a final Environmental Monitoring Plan. The CQAPP shall detail the approach to quality assurance during construction activities at the site. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of

additional field sampling; (3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and (6) preliminary construction schedule.

e. The intermediate design submittal shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final and final design submittals shall include, at a minimum, the following: (1) pre-final and final plans and specifications; (2) draft and final Operation and Maintenance Plan; and (3) preliminary and final bid documents.

g. Within seven (7) days after approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

## 12. Remedial Action.

### Selection of Remedial Action Contractor.

Within 21 days after Settling Defendants receive approval of

the final (100%) design, the Settling Defendants shall select a Remedial Action Contractor in the same manner set out in Paragraph 10 for Selection of Remedial Design and Supervising Contractor. If at any time thereafter, Settling Defendants propose to change a Remedial Action Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Remedial Action Contractor performs, directs, or supervises any Work under this Consent Decree. If EPA fails to provide authorization to proceed or written notice of its disapproval of the names on the list as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XXI (Force Majeure) hereof.

13. a. Within 98 days after EPA issues the authorization to proceed pursuant to Paragraph 12, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work

Plan, Settling Defendants shall submit to EPA and the State an updated Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) a groundwater monitoring plan; (4) methods for satisfying permitting requirements; and (5) methodology for implementation of the Operation and Maintenance Plan. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Within 15 days after Settling Defendants receive notice of approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence physical

on-site construction activities at the Site prior to approval of the Remedial Action Work Plan.

14. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

16. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA RPM designated pursuant to Section XIII below of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. The Settling Defendants shall include in the written notification the following information, where available: (1) the

name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The Settling Defendants shall identify the receiving facility and state following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

#### VII. ADDITIONAL WORK

17. In the event that EPA determines or the Settling Defendants propose that Additional Work is necessary to meet the Performance Standards or carry out the remedy selected in the ROD, notification of such Additional Work shall be provided to the EPA Remedial Project Manager (RPM) and all Project Coordinators designated pursuant to this Consent Decree.

18. Within 45 days of receipt of written notice from EPA pursuant to Paragraph 17 that Additional Work is necessary or such longer time as may be specified by EPA, Settling Defendants shall submit to EPA and the State for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan and

schedule for the Additional Work. The plan shall conform to this Consent Decree, the NCP, and Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0.4A) ("RD/RA Guidance"), and subsequent amendments to such guidance upon written notice to Settling Defendants of such amendment by EPA. Amended guidance shall apply only to procedures conducted after such written notice. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendants shall implement the plan for Additional Work in accordance with the schedule contained therein.

19. Within 30 days of approval of a written proposal from Settling Defendants that Additional Work is necessary to meet the Performance Standards or carry out the remedy selected in the ROD, Settling Defendants shall submit to EPA and the State for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan and schedule for the Additional Work. The plan shall conform to this Consent Decree, the NCP, RD/RA Guidance, and any amendments to that guidance. Amended guidance shall apply only to procedures conducted after written notice by EPA to Settling Defendants of such amendments. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendants shall complete the Additional Work in accordance with the schedule contained in the approved plan.

20. Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that Additional Work is necessary to meet the

Performance Standards or carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 70-73 of this Consent Decree.

#### VIII. EPA PERIODIC REVIEW

21. Settling Defendants shall conduct any Work as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

22. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendants, the State and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region I, or his/her delegate will determine in writing whether any further response actions are appropriate.

23. If the Regional Administrator, EPA Region I, or his/her delegate determines, based on information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, or during any period for submission of written comments pursuant to Paragraph 22, that the Remedial Action is not protective of human health and the environment, the United States may institute further proceedings in this action or in a new action, or EPA may issue an administrative order, to require the Settling Defendants, or any other person, to perform such further



response actions that EPA determines are appropriate or to reimburse the United States for the costs incurred for such additional response actions.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

24. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures throughout the performance of the Work in accordance with the SOW, EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon written notification to Settling Defendants of such amendment by EPA. Amended guidelines shall apply only to procedures conducted after such written notification. If relevant to the proceeding, validated sampling data generated in accordance with the QA/QC and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall assure that EPA and State personnel and their authorized representatives are allowed reasonable access to any laboratory utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall assure that such laboratories shall analyze all samples submitted by EPA pursuant to the QA/QC for quality assurance monitoring.

25. Upon request of EPA or the State, the Settling Defendants shall allow split or duplicate samples to be taken by

EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. EPA and the State will provide to Settling Defendants, after written request, access to a summary of the validated analytical results of the requested sampling, including the results of split and duplicate sampling. Upon request, EPA and the State will allow the Settling Defendants to take split or duplicate samples of any samples Plaintiffs take as part of their oversight of the Settling Defendants' implementation of the Work.

26. Within seven (7) days of receipt of a written request by EPA or the State, Settling Defendants shall submit to EPA and the State three (3) copies each of the results of all sampling and/or tests which have been subjected to QA/QC validation, regardless of the results of validation, and other data including but not limited to field screening data, groundwater treatment processes quality control data, and air monitoring data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree. Settling Defendants shall insure that all samples and/or tests are promptly analyzed and subjected to QA/QC validation.

27. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights,

including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

**X. ACCESS AND INSTITUTIONAL CONTROLS**

28. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree that the United States, the State, and their representatives, including, but not limited to, EPA and its employees, agents, authorized representatives or contractors, shall have access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to such property is owned or controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work and other activities taking place on such property;

b. Verifying any data or information submitted to the United States, the State, or both;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing Additional Work at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents or Contractors, consistent with Section XXVI (Access to Information); and

g. Assessing Settling Defendants' compliance with this Consent Decree.

29. To the extent that the Site or any other area where Work or Additional Work is to be performed under this Consent Decree or any area for which Institutional Controls are needed is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use "best efforts" to secure such Institutional Controls.

30. To the extent that the Site or any other property to which access or Institutional Controls is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use "best efforts" to secure from such persons access for Settling Defendants, as well as for the United States, the State and their respective representatives, including but not limited to EPA, NH DES, their employees, agents, authorized representatives or contractors, as necessary to effectuate implementation of this Consent Decree. If (a) any Access required to complete the Remedial Design is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional Access beyond that previously secured is necessary, or (b) if any Access required to complete the Remedial Action is not obtained within 21 days of submission of the final 100% design in the Remedial Design Work Plan or within 45 days of the date EPA notifies the Settling Defendants in writing that additional Access beyond that

previously secured is necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain Access. If Institutional Controls required to complete the Work are not obtained within 120 days of EPA approval of the 100% final design, or such later time as may be provided in the approved Remedial Design, or within 120 days of the date EPA notifies the Settling Defendants, in writing, that additional Institutional Controls beyond those previously secured are necessary, Settling Defendant shall promptly notify the United States, in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain imposition of Institutional Controls. The United States or the State may, as it deems appropriate, assist Settling Defendants in obtaining Access or Institutional Controls including, if necessary, taking actions to gain access pursuant to Sections 104 or 106 of CERCLA and Section 300.400(d)(3) and (4) of the NCP or any other law. Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVIII (Reimbursement of Oversight and Future Response Costs), for all costs incurred by the United States or the State in obtaining Access or Institutional Controls, including, but not limited to, attorneys fees.

31. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related

thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### XI. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State two (2) copies each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and testing that have been subjected to QA/QC validation procedures and all other data received or generated by Settling Defendants or their contractors or agents in the previous month and the status of sampling, testing, analysis and validation; (c) identify all work plans, plans and other deliverables required by this Consent Decree that were completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide any other information relating to the progress of construction that is necessary to assess compliance with this Consent Decree, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules

that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the State by the first day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 52.b of Section XVI (Certification of Completion of Work). If requested by EPA or the State, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

33. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

34. Upon learning of the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C § 9603, and/or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Settling Defendants shall, within 24 hours of the onset of such event, orally notify the EPA RPM or the EPA Geographic Section Chief designated pursuant to Section XIII (in the event of the unavailability of the EPA RPM), or, in the event that neither the EPA RPM or the EPA Geographic Section Chief is available, the Emergency Response Unit, Region I, United

States Environmental Protection Agency and the State Project Coordinator. Within 24 hours of the onset of such event, Settling Defendants shall also orally notify the State Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. Within 20 days of learning of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report to the Plaintiffs setting forth all actions taken in response thereto. Settling Defendants shall exercise diligence to learn of such events. Failure to exercise diligence shall not excuse performance under this Section.

35. Settling Defendants shall submit 12 copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by the Settling Defendants' Project Coordinator.



## XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall, in writing, either: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) direct that the Settling Defendants modify the submission; (e) disapprove, in whole or in part, the submission, notifying Settling Defendants of deficiencies; or (f) any combination of the above.

38. In the event of approval, approval upon specified conditions, or modification by EPA, Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXII (Dispute Resolution) with respect to the modifications or specified conditions made by EPA.

39. Upon receipt of a written notice of disapproval or a written notice requiring a modification, Settling Defendants shall, within 21 days thereafter, or such other time as circumstances require as determined and specified by EPA in such written notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the written notice of disapproval or a written notice requiring a modification, Settling Defendants shall proceed, at the direction

of EPA, to take any action required by any non-deficient portion of the submission, in accordance with the schedules established by EPA.

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Subject only to their right to invoke procedures set forth in Section XXII (Dispute Resolution), Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA.

41. If, upon the first resubmission or upon any subsequent resubmission, the plan, report, or item is disapproved by EPA due to a material defect, Settling Defendants shall be deemed to be in violation, as of the date the submittal was originally due, of the provision of this Consent Decree requiring the Settling Defendants to submit such plan, report, or item unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and this Court overturns EPA's disapproval pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXIII (Stipulated Penalties).

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be deemed to be incorporated in and an enforceable part of this Consent Decree.

XIII. REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

43. Within 21 days of lodging this Consent Decree, Settling Defendants shall notify EPA and the State, in writing, of the name, address and telephone number of their designated Project Coordinator and Alternate Project Coordinator. The Settling Defendants' Project Coordinator shall be subject to approval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. Within 21 days of the date of the lodging of this Consent Decree, EPA will designate, in writing, a Remedial Project Manager for administration of its responsibilities, for oversight of the day-to-day activities conducted under the Consent Decree, and for receipt of all written matter required by this Consent Decree. In addition, EPA will designate, in writing, a Geographic Section

Chief who shall be responsible for all the findings of approval/disapproval, and comments on all major project deliverables. Within 21 days of the date of the lodging of this Consent Decree, the State will designate, in writing, a Project Coordinator for administration of its responsibilities for the State's oversight of activities conducted under the Consent Decree, and for receipt of all written matter required by this Consent Decree. If any Party decides to change its designated Project Coordinator, RPM, or Geographic Section Chief, the name, address and telephone number of the successor will be given to the other parties within 5 working days before the change(s) become effective, unless impracticable, but in no event later than the actual day the change is made.

44.a. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's RPM shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's RPM shall have authority, consistent with the National Contingency Plan, to halt, conduct or direct any Work required by this Consent Decree, and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment due to release or

threatened release of Waste Material.

b. EPA's RPM, and the Settling Defendants' Project Coordinator will meet on a weekly basis unless EPA's RPM decides that such a meeting is not necessary. The State's Project Coordinator shall also be provided an opportunity to attend such meetings.

#### XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of lodging of this Consent Decree, Settling Defendants shall demonstrate their ability to complete the Work and to pay all claims that arise from the performance of the Work by obtaining and maintaining financial security, equalling the total estimated cost of the Work, in one of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more letters of credit;

(c) A guarantee to perform the Work by one or more parent corporations, sibling corporations, or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or

(d) A demonstration that the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

(e) Internal financial information regarding Settling Defendants' net worth, cash flow, total liabilities, and current rating for most recent bond issuances sufficient to demonstrate to EPA's satisfaction that one or more Settling Defendants have the financial ability to complete the Work. Settling Defendants that

are publicly traded corporations shall each submit both the most recent 10-K Annual Report submitted to the Securities and Exchange Commission and the most recent certified public accountant's report of a Settling Defendant's financial statements for the latest completed fiscal year if not included therein. Settling Defendants which are subsidiaries of publicly traded corporations shall each submit the most recent 10-K Annual Report for the parent company, and, if they exist, the most recent certified public accountant's report for the subsidiary and the most recent consolidated report prepared on behalf of the parent corporation which includes the subsidiary. Information submitted pursuant to this Subparagraph shall be considered adequate demonstration of financial ability to complete the Work where such information, in EPA's view, subject to Section XXII (Dispute Resolution), indicates that one or more Settling Defendants meet the requirements of 40 C.F.R. § 264.143(f)(1)(i) or (ii), substituting the term "estimated cost of remaining Work less amounts remaining in the Trust Fund" for all references in Sections 264.143(f)(1)(i) and (ii) (B) and (D) to "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates". If necessary to establish that at least one of the Settling Defendants meets the standards in the previous sentence, Settling Defendants shall submit additional financial information as specified by EPA. Settling Defendants that are municipalities shall, in addition to providing the current rating for most recent bond issuances, annual budgets and annual

financial reports, obtain authorization for the amount necessary to meet their financial obligations to perform the Work pursuant to this Consent Decree from the municipal legislative body in accordance with the following schedule:

1. The City of Portsmouth City Council shall, after duly advertised notice, conduct a public hearing for the purpose of authorizing the execution of this Consent Decree and the City's financial obligations necessary to perform the Work pursuant to this Consent Decree no later than November 18, 1991.

2. The Towns of Newington and North Hampton shall each conduct a special town meeting in accordance with the procedures established by law, for the purpose of authorizing the execution of this Consent Decree and their financial obligations necessary to perform the Work pursuant to this Consent Decree no later than January 30, 1992.

46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(c) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work pursuant to Paragraph 45 (c-e), they shall resubmit the information and statements required under those Subparagraphs annually, on the anniversary of the lodging date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial

assurances provided pursuant to this Paragraph are inadequate, Settling Defendants shall, within 30 days of receipt of written notice of EPA's determination, obtain and present to EPA for approval, after a reasonable opportunity for review and comment by the State, one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work and pay all claims that arise from the performance of the Work shall not excuse performance of any activities required under this Consent Decree.

#### XV. TRUST FUND

47. Within ten (10) days of the lodging of this Consent Decree, Settling Defendants shall present to EPA for approval, with a copy to the State, a fully executed trust agreement (the "Trust Agreement") establishing the Coakley Landfill Superfund Site Trust Fund (the "Trust Fund") and shall notify EPA and the State of the identity and qualifications of the trustee(s). The Trust Agreement shall confer upon the Trustee(s) all powers and authorities necessary to finance the obligations of the Settling Defendants under this Consent Decree. Money paid into the Trust Fund by Settling Defendants and Settling Federal Agencies shall be used solely to pay proper and necessary expenses pursuant to this Consent Decree, including expenses of administering the Trust and the refund provided for in Paragraph 62. The Trust Fund may not be used to pay stipulated penalties that may be required to be paid pursuant to Section XXIII and shall not be used to pay



attorneys' fees or other litigation costs of the Settling Defendants.

48. Notwithstanding anything in the Trust Agreement, Settling Defendants shall be jointly and severally liable for compliance with this Consent Decree. Settling Defendants shall provide EPA and the State with written notice at least ten (10) days in advance of any proposed change in the Trust Agreement or of the Trustee(s). EPA, through its approval of the terms and conditions of the Trust Agreement or otherwise, does not guarantee the monetary sufficiency of the Trust Fund nor the legal sufficiency of the Trust Agreement.

49. The Trust Agreement shall provide that the Trustee(s) shall, within sixty (60) days of his or her appointment and every ninety (90) days thereafter, submit to Settling Defendants, EPA, and the State financial reports that include the amount of money currently in the Trust Fund and cash flow projections showing the level of funds that will be necessary to pay for the obligations of Settling Defendants under this Consent Decree for the next one hundred eighty (180) days. If the amount of money in the Trust Fund is less than the amount projected in the Trustee's report to be needed for the next one hundred eighty (180) days, Settling Defendants shall, within thirty (30) days of issuance of the Trustee's report, deposit into the Trust Fund amounts sufficient to bring the level of the Trust Fund up to that projected amount. Settling Defendants shall in any event make payments to the Trust Fund when and to the extent necessary to ensure the uninterrupted

progress and timely completion of the Work and timely payment of the refund provided in Paragraph 62 if required. Any money remaining in the Trust Fund upon certification by EPA that all of the Work has been satisfactorily completed and all Response Costs reimbursed shall be returned to Settling Defendants in accordance with the terms of the Trust Agreement.

50. If any Settling Defendant fails to pay within 30 days into the Trust Fund the additional amounts required under Paragraph 49, the other remaining Settling Defendants shall pay their proportionate share of the unpaid amount within thirty (30) days thereafter. The failure of any Settling Defendant to pay for its share of the proper and necessary expenses of this Consent Decree, shall not excuse timely completion of any obligation under this Decree.

#### XVI. CERTIFICATION OF COMPLETION OF WORK

##### 51. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall so certify to the United States and the State and shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report to EPA for approval pursuant to Section XII

(Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall certify that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"I certify that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the material submitted. Based upon my inquiry of the person or persons directly responsible for gathering the information, the information contained in or accompanying this submission is to the best of my knowledge and belief, after thorough investigation, true, accurate and complete."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all

activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Certification of Completion of Remedial Action by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIV (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion of Remedial Action, including, but not limited to, access, institutional controls, operation and maintenance, record retention, indemnification, insurance, and payment of Future Response Costs and penalties.

52. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall so certify to the United States and the State and shall conduct a pre-certification

inspection to be attended by Settling Defendants, or their representative(s), EPA and the State. Such inspection shall be followed within 30 days by submitting a written report signed by a registered professional engineer and the Settling Defendants' Project Coordinator certifying that all phases of the Work have been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement:

"I certify that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the material submitted. Based upon my inquiry of the person or persons directly responsible for gathering the information, the information contained in or accompanying this submission is to the best of my knowledge and belief, after thorough investigation, true, accurate and complete."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work, and will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution).

b. If EPA concludes, based on the initial or any

subsequent Certification of Completion of Work by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so certify this to the Settling Defendants in writing. This certification shall constitute the "Certification of Completion of the Work" for purposes of this Consent Decree including, but not limited to, Section XXIV (Covenants Not to Sue by Plaintiffs).

XVII. ENDANGERMENT AND FUTURE EMERGENCY RESPONSE

53. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to public health or the environment, Settling Defendants shall, subject to Paragraph 54, immediately take all appropriate action to prevent, abate, or minimize the release or threat of release that caused the emergency situation or immediate threat, and shall immediately notify the EPA's RPM and, if the RPM is unavailable, EPA's Geographic Section Chief. If neither of these persons is available, the Settling Defendants shall immediately notify the EPA Emergency Response Unit, Region 1. In addition, the Settling Defendants shall immediately notify the State's Project Coordinator. Within 5 days after the notification, the Settling Defendants shall provide to EPA's RPM and the State's Project Coordinator notice in writing of the action(s) taken to prevent, abate or minimize the release or threat of release. Settling Defendants shall take such actions in

consultation with EPA's RPM in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW and approved by EPA. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Reimbursement of Oversight and Future Response Costs). Payment shall be made within 30 days of Settling Defendants receipt of a bill requiring payment. Nothing in this Paragraph shall require Settling Defendants to undertake Additional Work as set forth in Section VII (Additional Work) of this Consent Decree.

54. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVIII. REIMBURSEMENT OF OVERSIGHT AND FUTURE RESPONSE COSTS

55. Settling Defendants shall jointly and severally reimburse the United States for its Oversight Costs up to \$450,000, and the State for its Oversight Costs, in a lump sum payment to the State Hazardous Waste Fund in the amount of \$100,000. Payment to the

State for Oversight Costs shall be made within thirty days of the date of entry of the Consent Decree, and any late payment to the State for Oversight Costs shall include ten (10%) percent interest. Settling Defendants shall also jointly and severally reimburse the United States and the State for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States and the State. On an annual basis beginning with the anniversary of the lodging of this Consent Decree, the United States, as to Oversight and Future Response Costs, and the State, as to Future Response Costs, will each send Settling Defendants a bill requiring payment that includes a line item summary of costs in dollars by category of costs (including, without limitation, payroll, travel, and contracts) and a brief narrative (which will generally be one to two paragraphs) summarizing the work performed during this billing period. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. The Settling Defendants shall make all payments required by this Paragraph in the manner described below:

a. To the United States in the form of a certified check or checks made payable to "EPA Hazardous Substances Superfund," and referencing the site name, CERCLA Number NHD064424153 and DOJ Case Number 90-11-2-678 in reimbursement of Oversight or Future Response Costs. The Settling Defendants shall forward the certified check(s) to



EPA Region I  
Attn: Superfund Accounting  
P.O. Box 360197M  
Pittsburgh, PA 15251

and shall send copies of the check and the transmittal letter to the United States as specified in Section XXX (Notices and Submissions) and to

Regional Hearing Clerk  
U.S. EPA, Region I  
JFK Federal Building, RCG  
Boston, MA 02203.

b. To the State in the form of a certified check or checks made payable to Treasurer, State of New Hampshire, in reimbursement of Oversight or Future Response Costs incurred by the State. The Settling Defendants shall send the certified check(s) to Charles Holtman, Assistant Attorney General, Environmental Protection Bureau, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301-6397.

56. Settling Defendants may contest payment of any Oversight and Future Response Costs under Paragraph 55 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States and the State (if the State's accounting is being disputed) pursuant to Section XXX (Notices and Submissions). Any such objection shall specifically identify the contested Oversight or Future Response Costs and the basis for the objection. In the event of an objection, the Settling Defendants

shall within the 30 day period pay all uncontested Oversight or Future Response Costs to the United States or the State in the manner described in Paragraph 55. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a bank duly chartered in the State of New Hampshire and remit to that escrow account funds equivalent to the amount of the contested Oversight or Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXX (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Oversight or Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XXII (Dispute Resolution). If the United States or the State prevails in the dispute, within 14 days of the resolution of the dispute, the Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 55. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated

accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 55; Settling Defendants shall be disbursed of the balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Oversight and Future Response Costs, and the State for its Future Response Costs.

57. In the event that the payments required by Paragraph 55 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Oversight and Future Response Costs shall begin to accrue 30 days after the Settling Defendants' receipt of the bill accompanied by the documents identified in Paragraph 55 of this Section. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

#### XIX. SETTLING FEDERAL AGENCIES

58. Within 60 days after entry of this Consent Decree, the United States shall pay into the Coakley Landfill Superfund Site Trust Fund, on behalf of the Settling Federal Agencies, a lump-sum payment of five million two hundred fifty thousand dollars

(\$5,250,000.00) as their share of costs to be incurred in carrying out response actions for Operable Unit 1. The United States Department of Justice will make best efforts to obtain the payment of this amount within 30 days of the entry of the Consent Decree.

59. Within a reasonable time after entry of this Consent Decree, the United States shall arrange for deposit into the EPA Hazardous Substances Superfund, on behalf of the Settling Federal Agencies, a lump-sum of fifty thousand dollars (\$50,000.00) for EPA Oversight Costs.

60. a. Payment to the Trust Fund by the Settling Federal Agencies shall be in the form of a check made payable to the Coakley Landfill Superfund Site Trust Fund. Settling Federal Agencies shall forward a copy of the check and transmittal letter, referencing the site name, CERCLA Number NHD064424153 and DOJ Case Number 90-11-2-678, to the United States as specified in Section XXX (Notices and Submissions) and to

Regional Hearing Clerk  
U.S. EPA, Region I  
JFK Federal Building, RCG  
Boston, MA 02203.

b. Settling Federal Agencies shall forward a copy of the documentation for the deposit into the EPA Hazardous Substances Superfund, referencing the site name, CERCLA Number NHD064424153 and DOJ Case Number 90-11-2-678, to the United States as specified in Section XXX (Notices and Submissions) and to

Regional Hearing Clerk  
U.S. EPA, Region I  
JFK Federal Building, RCG  
Boston, MA 02203.

c. Payments by the United States on behalf of Settling Federal Agencies are subject to the availability of appropriated funds. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

61. The lump-sum payments referenced in Paragraphs 58 and 59 shall be in full and complete settlement of any and all liability the United States may have to the Settling Defendants in connection with the costs of performing the Work, together with any other response costs and any related or additional expenses associated with response action for Operable Unit 1, including, but not limited to: Past Response Costs; Future Response Costs; Oversight Costs; costs of Additional Work undertaken pursuant to Section VII; costs of further response actions undertaken pursuant to Section VIII; costs of emergency response undertaken pursuant to Section XVII; costs of providing indemnification in accordance with Paragraphs 63 and 64; costs of maintaining insurance required pursuant to Paragraph 65; and costs of response or reimbursement thereof incurred pursuant to the reservations contained in Paragraphs 87 and 88.

62. If the Settling Defendants certify completion of remedial action in accordance with Paragraph 51.a., and if EPA so certifies pursuant to Paragraph 51.b., without the Settling Defendants having commenced operation of a groundwater treatment system, the Settling Defendants shall refund two million seven

hundred fifty thousand dollars (\$2,750,000.00) from the Coakley Landfill Superfund Site Trust Fund to the United States, together with interest calculated at the rates established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and compounded annually.

a. The Settling Defendant shall make payment under this Paragraph not later than 60 days after EPA certification pursuant to Paragraph 51.b., or at such earlier time as the Settling Defendants and the Settling Federal Agencies mutually agree, by check payable to "Treasurer, United States of America"; referencing the site name, CERCLA Number NHD064424153 and Department of Justice Case Number 90-11-2-678; and delivered to the offices of the Air Force project coordinator specified in Paragraph 107.

b. Interest on any refund pursuant to this Paragraph shall be paid from the date of EPA approval of the final (100%) design referenced in Paragraph 12 of the Consent Decree or three (3) years from the date of payment into the Trust Fund by the United States in accordance with Paragraph 58, whichever comes earlier, to and including the date of refund in accordance with this Paragraph. The dates of payment and refund pursuant to this Paragraph shall be measured from the date properly appearing on the face of the instrument by which payment is made.

c. For purposes of this Paragraph, "groundwater treatment system" means the system described in subpart E of Appendix B, or any comparable system designed to remove contaminants from

groundwater. Neither containment nor natural attenuation of pollutants is a groundwater treatment system.

d. Nothing in this Paragraph shall relieve the Settling Defendants of their respective obligations to properly fund the Trust Fund in accordance with Paragraphs 49 and 50.

e. If and only if (a) Settling Defendants do not commence operation of a groundwater treatment system by the time EPA makes the certification provided for in Paragraph 51.b. but (b) do commence either (1) actual physical construction of a groundwater treatment system or (2) actual physical construction of a containment system specifically required by EPA in lieu of a groundwater treatment system, the two million seven hundred fifty thousand dollar (\$2,750,000) refund provided for in this Paragraph shall be reduced by twelve percent (12%) of (a) the amount expended by the Settling Defendants from the Trust Fund on actual physical construction of a groundwater treatment system or (b) the amount expended by the Settling Defendants from the Trust Fund on actual physical construction of a containment system specifically required by EPA in lieu of a groundwater treatment system. Neither the aforesaid amount expended on construction of a groundwater treatment system nor the aforesaid amount expended on construction of a containment system shall include stipulated penalties, attorneys' fees, costs of administering the Trust Fund, costs of remedial design, costs of groundwater monitoring, costs for capping the landfill, costs for wetlands sediments consolidation, costs of the landfill gas collection and treatment

system, costs of air monitoring, and/or any other costs that were not incurred for actual physical construction of the groundwater treatment system or the containment system. This reduction to the refund provision shall not be operative unless Settling Defendants keep, and provide to the United States no later than thirty (30) days after the certification provided for in Paragraph 51.b., clear documentation that identifies the monies expended on actual physical construction of the groundwater treatment system or actual physical construction of the containment system specifically required by EPA in lieu of a groundwater treatment system. If the \$2,750,000 refund is reduced as set forth in this Subparagraph, interest on the refund as provided for in this Paragraph shall apply only to \$2,750,000 minus the reduction, if any, set forth in this Subparagraph.

#### XX. INDEMNIFICATION AND INSURANCE

63. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying



out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

64. Settling Defendants waive all claims against the United States and the State and their officials, agents, employees, contractors, subcontractors and representatives for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants

shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

65. a. At least 5 days prior to commencing any on-site Work, Settling Defendants shall secure, and shall maintain for the duration of this Consent Decree, comprehensive general liability insurance with limits of \$5 million, combined single limit, and automobile insurance with limits of \$2 million dollars, combined single limit naming as insured the United States and the State. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. At least 5 days prior to commencement of the on-Site Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor

or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

b. In the event that Settling Defendants or their contractors or subcontractors are unable, through their best efforts, to obtain some or all of the Comprehensive General Liability Insurance specified in Paragraph 65.a. of this Section because such insurance is not commercially available, they shall send EPA written notice of their inability to obtain the required insurance. The notice shall identify which kinds of insurance are commercially unavailable and shall describe Settling Defendants' efforts to obtain such insurance. If EPA determines in its sole discretion that Settling Defendants did not exercise best efforts to obtain such insurance, Settling Defendants shall be in violation of this Consent Decree. If EPA determines that Settling Defendants did exercise best efforts to obtain the required coverage and that such coverage was not commercially available, EPA and Settling Defendants may mutually agree on reasonable alternative coverage including self-insurance.

#### XXI. FORCE MAJEURE

66. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling

Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

67. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally in person or by telephone EPA's RPM or, in his or her absence, EPA's Geographic Section Chief or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region I, within 48 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA and the State the following: an explanation of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken by Settling Defendants to prevent or minimize the delay; a schedule for

implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

68. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is or was caused by a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be

caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 66 and 67 above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

## XXII. DISPUTE RESOLUTION

70. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the

United States, except Settling Federal Agencies, and Settling Defendants arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree.

However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

71. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party notifies the other parties in writing that there is a dispute.

72. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written statement of position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

73. Formal dispute resolution for disputes pertaining to

the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the selection of the remedy or other provisions of the ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph and Paragraph 72.

b. Within fourteen (14) days after receipt of Settling Defendants' statement of position submitted pursuant to Paragraph 72, EPA, and any other party wishing to contest the Settling Defendants position will serve on Settling Defendants its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon, in response to Settling Defendants' statement of position. Where appropriate, EPA may allow submission of supplemental statements of position by



the Parties to the dispute.

c. The Director of the Waste Management Division, EPA Region I, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 73 (a) and (b). This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 73 (d) and (e).

d. Any administrative decision by EPA pursuant to Paragraph 73 (c) shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

e. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 73 (a) and 73 (b).

74. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any Work nor are otherwise

accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' statement of position submitted pursuant to Paragraph 72, the Waste Management Division Director will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on all Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law. In such proceedings, Settling Defendants bear the burden of coming forward with evidence and the burden of persuasion on factual issues. Nothing herein shall prevent any party from arguing that the Court shall apply the appropriate standard of review.

75. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of the Settling Defendants under this

Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute as provided in Paragraph 83. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXIII (Stipulated Penalties).

#### XXIII. STIPULATED PENALTIES

76. Settling Defendants shall jointly and severally be liable for stipulated penalties in the amounts set forth in Paragraphs 77 and 78 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXI (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules approved or established under this Consent Decree. For commencement dates, "compliance" by Settling Defendants shall include commencement of the required activity by the deadlines set forth in the time schedules established pursuant to this Consent Decree, SOW, or workplans approved or established thereunder.

77. In the event that Settling Defendants fail to comply with

Section X (Access), Section XII (Submissions Requiring Agency Approval), Section XIV (Assurance of Ability to Complete Work), Section XV (Trust Fund), Section XVIII (Reimbursement of Oversight and Future Response Costs), Section XX (Indemnification and Insurance) of this Consent Decree, or to properly and timely achieve the following major milestones and the deliverables required under the following Subparts of the SOW:

- (a) F.1.a.1. (submittal of Supervising/Remedial Design Contractor list(s));
- (b) Consent Decree, Paragraph 10.b. (resubmittal, if necessary, of Supervising/Remedial Design Contractor list(s));
- (c) G.1.a. (submission of Remedial Action Contractor list);
- (d) Consent Decree, Paragraph 12. (resubmittal, if necessary, of Remedial Action Contractor list);
- (e) F.1.b. (submittal of Health and Safety Plan);
- (f) F.2.a.1. (submittal of Project Operations Plan (all components));
- (g) F.2.a.2. (submittal of Pre-Design Work Plan (all components));
- (h) F.2.a.3. (submittal of Environmental Monitoring Plan (all components));
- (i) F.2.b. (commencement of Pre-Design Work);
- (j) F.2.c. (submittal of Pre-Design Report for each investigation in Pre-Design Work Plan);
- (k) F.3.a. (submittal of Remedial Design Work Plan);
- (l) F.3.a.2.a (submittal of 30% preliminary design);
- (m) F.3.a.2.b. (submittal of 60% intermediate design);
- (n) F.3.a.2.c. (submittal of 95% pre-final design);
- (o) F.3.a.2.d. (submittal of 100% final design);

- (p) F.3.a.4. (submittal of Final Environmental Monitoring Plan);
- (q) F.3.b. (commencement of Remedial Design Work Plan);
- (r) G.2.a. (submittal of Remedial Action Work Plan);
- (s) G.2.b. (commencement of Remedial Action);
- (t) H. (submittal of Remedial Action--Update of monitoring plan for each component of remedy);
- (u) H. (submittal of RA--Update of long-term operation and maintenance for each component of the remedy);
- (v) Commence consolidation of wetlands sediments;
- (w) Complete consolidation of wetlands sediments;
- (x) Commence construction of cap;
- (y) Complete construction of cap;
- (z) Commence installation of extraction wells;
- (aa) Complete installation of extraction wells;
- (bb) Commence installation of monitoring wells;
- (cc) Complete installation of monitoring wells;
- (dd) Commence construction of groundwater treatment plant;
- (ee) Complete construction of groundwater treatment plant;  
and
- (ff) Commence operation of groundwater extraction and treatment system,

Settling Defendants shall pay stipulated penalties in the amounts set forth below for each day of each and every violation of said requirements:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 7th day
\$2,000	8th through 14th day
\$4,000	15th through 30th day
\$6,000	31st through 60th day
\$15,000	61st day and beyond

78. In the event that Settling Defendants fail to comply with Section X (Access and Institutional Controls), Section XI (Reporting Requirements), Section XIII (Remedial Project Manager/Project Coordinators), Section XVI (Certification of Completion), Section XXVIII (Access to Information), Section XXIX (Retention of Records) or Section XXX (Notices and Submissions) of this Consent Decree, or to properly and timely achieve the following milestones and the deliverables required under the following Subparts of the SOW:

- (a) F.1.c. (submittal of Site Security Plan);
- (b) F.1.d. (submittal of Site Survey/Site Map);
- (c) F.1.a.2. (submittal of Letter of Acceptance from Supervising/Remedial Design Contractor);
- (d) G.1.b. (submittal of Letter of Acceptance from Remedial Action Contractor);
- (e) F.3.a. (submittal of updated Health and Safety Plan under Remedial Design Work Plan);
- (f) F.3.a.5. (submittal of operation and maintenance plan for groundwater extraction and treatment);
- (g) F.3.a.6. (submittal of operation and maintenance plan for cap and gas collection system); and
- (h) G.2.d. (submittal of final remedial construction reports for each component of the remedy),

Settling Defendants shall pay stipulated penalties in the amounts set forth below for each day of each and every violation of said requirements:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 7th day
\$1,000	8th through 30th day
\$3,000	31st through 60th day
\$7,500	61st day and beyond

79. If EPA takes over a portion of the Work pursuant to Paragraph 91 of Section XXIV (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty of the lesser of ten percent (10%) of the cost of the portion of the Work, or \$200,000. In the event EPA takes over all of the Work pursuant to Paragraph 91, Settling Defendants shall be liable for a stipulated penalty of \$200,000.

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

81.a. All penalties owed to the United States and the State under this Section shall be due and payable (70% payable to the United States, 30% payable to the State) within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XXII (Dispute Resolution). All payments to the United States under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to

EPA Region I  
Attn: Superfund Accounting  
P.O. Box 360197M  
Pittsburgh, PA 15251

and shall reference CERCLA Number NHD064424153 and DOJ Case Number 90-11-2-678. Copies of check(s) paid pursuant to this Section,

and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXX (Notices and Submissions) and to:

U.S. EPA, Region I  
Regional Hearing Clerk  
JFK Federal Building, RCG  
Boston, MA 02203

b. All payments to the State under this Section shall be paid by certified check made payable to "Treasurer, State of New Hampshire" and shall be mailed to

Charles Holtman  
Assistant Attorney General  
Environmental Protection Bureau  
State House Annex  
25 Capitol Street  
Concord, NH 03301-6397

82. Neither the invocation of dispute resolution procedures under Section XXII (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

83. Unless otherwise agreed to by the United States and the State in writing, penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid during the dispute resolution period, until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties shall be paid to EPA and the State within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the



United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Settling Defendants to the extent that they prevail.

84. a. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as late charges and interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty-day period at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is

based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

85. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XXIV. COVENANTS NOT TO SUE BY PLAINTIFFS

86.a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 7003 of RCRA, 42 U.S.C. 6973 and Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs and Oversight Costs. These covenants not to sue shall take effect upon the effective date of this Consent Decree . These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Paragraphs 87, 88, and 90 of this Section, EPA covenants not to issue an order or take administrative action against the Settling Federal Agencies pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973 or Section 106

of CERCLA, 42 U.S.C. § 9606 for performance of the Work or for recovery of Past Response Costs, Future Response Costs, and Oversight Costs. This covenant shall take effect upon the effective date of this Consent Decree, and is conditioned upon satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. This covenant extends only to the Settling Federal Agencies and not to any other person.

c. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraph 90 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants or the Settling Federal Agencies pursuant to New Hampshire RSA 147-A:13, Section 107(a) of CERCLA or New Hampshire RSA 147-B for performance of the Work and for recovery of Past Response Costs and Future Response Costs and Oversight Costs. These covenants not to sue shall take effect upon the receipt by the State of the lump sum \$100,000 payment required by Paragraph 55 of Section XVIII (Reimbursement of Oversight and Future Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants and Settling Federal Agencies of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and Settling Federal Agencies and do not extend to any other person.

87. United States' pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response and EPA reserves, and this Consent Decree is without prejudice to, all rights of EPA against Settling Federal Agencies with respect to such further response actions relating to the Site or additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered after issuance of the Record of Decision, including the ESD, or
- (ii) information is received by EPA, in whole or in part, after issuance of the Record of Decision, including the ESD

and EPA determines, based on these previously unknown conditions or this information together with any other relevant information that the Remedial Action is not protective of human health or the environment.

88. United States' post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or

in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response and EPA reserves, and this Consent Decree is without prejudice to, all rights of EPA against Settling Federal Agencies with respect to such further response actions relating to the Site or additional costs if, subsequent to certification of completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered after the certification of completion of the Remedial Action, or
- (ii) information is received by EPA, in whole or in part, after the Certification of Completion of the Remedial Action

and EPA determines, based on these previously unknown conditions or this information together with other relevant information that the Remedial Action is not protective of human health or the environment.

89. For purposes of Paragraph 87, clause (i), the conditions known to the EPA shall include only those conditions set forth in the Record of Decision, including the ESD, for the Site and in the administrative record supporting the Record of Decision, including the ESD. For purposes of Paragraph 87, clause (ii), information received by the EPA is any information other than that contained in the Record of Decision, including the ESD, for the Site and in the administrative record supporting the Record of Decision,

including the ESD. For purposes of Paragraph 88, clause (i), the conditions known to the EPA shall include only those conditions set forth in the Record of Decision, including the ESD for the Site, in the administrative record supporting the Record of Decision, including the ESD, and any information received by the EPA pursuant to the requirements of this Consent Decree prior to Certification of the Remedial Action. For purposes of Paragraph 88, clause (ii), information received by the EPA is any information other than that contained in the Record of Decision, including the ESD, for the Site, in the administrative record supporting the Record of Decision, including the ESD, and any information received by the EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

90. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 86. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future

disposal, release, or threat of release of Waste Materials outside of the Site and not attributable to the Site;

(3) liability for the disposal of any Waste Material taken from the Site;

(4) liability for damages for injury to, destruction of, or loss of natural resources;

(5) liability for response costs that have been or may be incurred by the Department of Interior and National Oceanic and Atmospheric Administration;

(6) criminal liability;

(7) liability for violations of federal or state law which occur during or after implementation of the Work; and

(8) liability for additional operable units at the Site, including but not limited to response costs related to Operable Unit 2 incurred prior to or after entry of this Consent Decree, and liability for any other additional response actions and response costs related to the Site not associated with Operable Unit 1.

91. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with

law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVIII (Reimbursement of Oversight and Future Response Costs).

92. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law. In any claim pursuant to Paragraphs 87 or 88 of this Consent Decree asserted by the United States or the State in this action or in a new action, Settling Defendants reserve and retain their right to assert all defenses to said claim. The entry of this Consent Decree shall not be construed to be an acknowledgment by any Settling Defendant that there has been a release or threatened releases at the Site or that any such release or threatened release constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Additionally, the participation by any Settling Defendant in this Consent Decree shall not be considered an admission of liability and shall not be admissible in evidence against any Settling Defendant in any action other than (a) an action to enforce this Consent Decree or (b) an action in which any party to this Consent Decree needs to establish one or more terms of this Consent Decree.

#### XXV. COVENANTS BY SETTLING DEFENDANTS

93. a. Settling Defendants covenant not to sue or take



administrative action against the United States with respect to matters addressed by this Consent Decree or with respect to matters relating to implementation of this Consent Decree, including, but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111 or 112, any other provision of law; any claim against any department, agency or instrumentality of the United States related to the Site; and any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States after the date of lodging of this Consent Decree (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. The Settling Defendants reserve such claims or rights as are granted to them under this Consent Decree and the SOW. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

b. Settling Defendants and Settling Federal Agencies covenant not to sue or take administrative action against the State with respect to matters addressed by this Consent Decree or with respect to matters relating to implementation of this Consent

Decree, including, but not limited to: any claim against any department, agency, or instrumentality of the State related to the Site; and any claim arising out of response activities at the Site. However, the Settling Defendants and the Settling Federal Agencies reserve, and this Consent Decree is without prejudice to, actions against the State based on negligent actions taken directly by the State after the date of lodging of this Consent Decree (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. The Settling Defendants and the Settling Federal Agencies reserve such claims or rights as are granted to them under this Consent Decree and the SOW.

XXVI. MUTUAL COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

94. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, covenants not to sue the Settling Defendants for contribution pursuant to CERCLA §§ 107(a) or 113(f), 42 U.S.C. §§ 9607(a) or 9613(f); state statutory or common law; or any other provision of law, with respect to any matter resolved in this Consent Decree. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant extends only to the Settling Defendants,

and not to any other person.

95. a. In consideration of the payments that will be made by the United States on behalf of the Settling Federal Agencies under the terms of this Consent Decree, the Settling Defendants covenant not to sue the United States for contribution pursuant to CERCLA §§ 107(a) or 113(f), 42 U.S.C. §§ 9607(a) or 9613(f); state statutory or common law; or any other provision of law, with respect to any matter resolved in this Consent Decree. This covenant not to sue is conditioned on performance by the Settling Federal Agencies of their obligations under this Consent Decree. For purposes of this Paragraph "any matter resolved in this Consent Decree" includes the resolution outlined in Paragraph 61, and further includes any allegation that any agency, department or instrumentality of the United States other than the Settling Federal Agencies is liable with regard to the same matters.

b. If and only if (a) the Settling Defendants are required to pay and do pay the refund set forth in Paragraph 62, (b) the United States institutes a further proceeding or EPA issues an administrative order after the date that refund payment is made to require further response actions for Operable Unit 1 pursuant to Paragraph 23 (EPA Periodic Review), and (c) the Settling Defendants perform further response actions pursuant to that further proceeding or administrative order, the Settling Defendants' covenant not to sue the United States for contribution set forth in Subparagraph 95.a. shall not apply to the costs Settling Defendants incur to perform the further response actions

required by that further proceeding or administrative order. Also, in that event, the United States' covenant not to sue the Settling Defendants for contribution set forth in Paragraph 94 shall not apply to any costs that the United States incurs for further response actions for Operable Unit 1 required by any order issued to the Settling Federal Agencies by EPA pursuant to Paragraph 23 (EPA Periodic Review) after the date of the refund payment. The provisions of this Subparagraph shall not affect the provisions of Paragraph 94 or Subparagraph 95.a. in any respect not specifically set forth in this Subparagraph.

XXVII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

96. Nothing in this Consent Decree shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Consent Decree for any liability at the Site. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

97. With regard to claims for contribution against Settling Defendants and Settling Federal Agencies for matters addressed in

this Consent Decree, the Parties hereto agree that the Settling Defendants and the Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or any other claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Settling Federal Agencies expressly acknowledge that their arrangement with the Settling Defendants, embodied in the terms of this Consent Decree, was reached after appropriate negotiations at arms length. Settling Defendants expressly acknowledge that their arrangement with the Settling Federal Agencies, embodied in the terms of this Consent Decree, was reached after appropriate negotiations at arms length.

98. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim, and, as soon as practicable, motions for summary judgment and trials. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within 10 days of service of the complaint on them.

99. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not

maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIV (Covenants Not to Sue by Plaintiffs).

100. In any subsequent administrative or judicial proceeding initiated by the State, and in any subsequent administrative proceeding initiated by EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Federal Agencies shall not assert, and may not maintain, any defense or claims based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIV (Covenants Not to Sue by Plaintiffs).

#### XXVIII. ACCESS TO INFORMATION

101. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of

this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. This shall apply to both validated and unvalidated sampling, testing and other analytical data. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

102. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to the State under this Consent Decree to the extent

permitted by and in accordance with RSA Chapter 91-A. Documents or information determined to be confidential by the State will be afforded the protection specified in RSA Chapter 91-A. If no claim of confidentiality accompanies documents or information when they are submitted to the State, or if the State has notified Settling Defendants that the documents or information are not confidential under the standards of RSA Chapter 91-A, the public may be given access to such documents or information without further notice to Settling Defendants.

c. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

103. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or



engineering data, or any other documents or information evidencing conditions at or around the Site.

**XXIX. RETENTION OF RECORDS**

104. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XVI (Certification of Completion of Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XVI (Certification of Completion of Work), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

105. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by

federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

106. Each Settling Defendant and Settling Federal Agency hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

### XXX. NOTICES AND SUBMISSIONS

107. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a

change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, the Settling Defendants, and Settling Federal Agencies, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DJ # 90-11-2-678

and

Director, Waste Management Division  
United States Environmental Protection Agency  
Region I  
J.F.K. Federal Building  
Boston, MA 02203-2211

Re: Coakley Landfill Superfund Site

As to EPA:

Steven J. Calder  
EPA Remedial Project Manager  
Coakley Landfill Superfund Site, North Hampton, NH  
United States Environmental Protection Agency  
Region I  
J.F.K. Federal Building  
Boston, MA 02203-2211

As to the State:

Michael J. Robinette  
State Project Coordinator  
New Hampshire Department of  
Environmental Services  
6 Hazen Drive  
Concord, NH 03301

As to the Settling Defendants:

Settling Defendants' Project Coordinator

As to the Department of the Air Force

As to the Department of the Navy

XXXI. EFFECTIVE DATE

108. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXII. RETENTION OF JURISDICTION

109. This Court retains jurisdiction over both the subject matter of this Consent Decree and personal jurisdiction over the Settling Defendants and the Settling Federal Agencies for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in

accordance with Section XXII (Dispute Resolution) hereof.

#### XXXIII. APPENDICES

110. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description of the Site.

"Appendix D" is the complete list of the Settling Defendants.

#### XXXIV. COMMUNITY RELATIONS

111. Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

#### XXXV. MODIFICATION

112. Schedules for completion of the Work specified in this Consent Decree may be modified by agreement of EPA, the State and Settling Defendants. All such modifications shall be made in writing and a copy shall be filed with the Court.

113. No material modifications shall be made to the SOW, the Remedial Design Work Plan, and the Remedial Action Work Plan,

without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW, the Remedial Design Work Plan, and the Remedial Action Work Plan that do not materially alter those documents may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants. A copy of any such modifications shall be filed with the Court.

114. Nothing in this Section shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXXVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

115. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States, in consultation with the State, reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

116. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is

voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXVII. CONTINGENCY

117. This Consent Decree is contingent upon approval of the City Council of Portsmouth and the voters of the Town of North Hampton and the Town of Newington (as determined by Town meetings). If, by November 18, 1991, the City Council of Portsmouth has not approved the Consent Decree or if, by January 30, 1992, the voters of the Town of North Hampton and the Town of Newington have not affirmed their respective Town's entry into the Consent Decree, any party may withdraw its consent to this Consent Decree. No later than November 19, 1991, the City will inform the other parties to this Decree in writing as to whether the contingency has been satisfied as to the City of Portsmouth. No later than January 31, 1992, the Towns shall inform the other parties to the Decree in writing as to whether the contingency has been satisfied as to the Town of North Hampton and the Town of Newington, respectively. If the contingencies are not satisfied by November 18, 1991, by the City of Portsmouth or by January 30, 1992, by the Towns of North Hampton and Newington, each party reserves all of its rights, including but not limited to the right to withdraw its consent to the Decree and its rights under applicable federal and state laws.

XXXVIII. SIGNATORIES/SERVICE

118. Each undersigned representative of a Settling Defendant

and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

119. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

120. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. No answer to the Complaints filed by the Plaintiffs is required by any Settling Defendant or Settling Federal Agency who is a signatory to this Consent Decree.



SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et al., relating to the Coakley Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
Barry M. Hartman  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

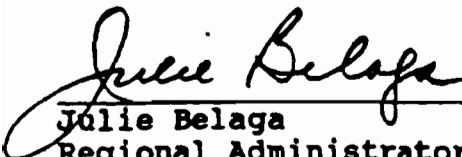
\_\_\_\_\_  
Elizabeth Yu, Esq.  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

\_\_\_\_\_  
Michael D. Rowe, Esq.  
Environmental Defense Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

**United States Attorney**

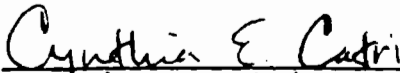
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**Nancy E. Hart, Esq.**  
**Assistant United States Attorney**  
**District of New Hampshire**  
**55 Pleasant Street, Room 439**  
**Concord, NH 03301**



---

**Julie Belaga**  
**Regional Administrator, Region I**  
**U.S. Environmental Protection**  
**Agency**  
**JFK Federal Building, RAA**  
**Boston, MA 02203**



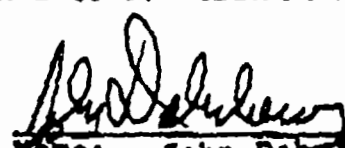
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**Cynthia E. Catri, Esq.**  
**Assistant Regional Counsel**  
**U.S. Environmental Protection**  
**Agency**  
**Region I**  
**JFK Federal Building, RCV**  
**Boston, MA 02203**

United States v. City of Portsmouth, New Hampshire, et. al.  
Consent Decree Signature Page

FOR THE STATE OF NEW HAMPSHIRE

Date: 9/26/91

  
Name: John Dabrowski  
Title: Assistant Commissioner  
Address: N.H. Department of  
Environmental Services  
6 Hazen Drive  
Concord, New Hampshire 03301  
Tel. No. (603) 271-3503

**Town of North Hampton****NEW HAMPSHIRE  
03862****Office of the Selectmen  
964-8087****September 27, 1991**

**Cynthia E. Catri,  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 1  
John F. Kennedy Federal Building  
Boston, MA 02203-2211**

**Re: Coakley Landfill Consent Decree**

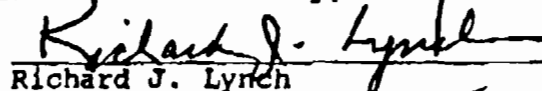
**Dear Ms. Catri:**

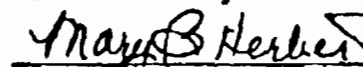
This letter is being provided to you in response to your September 25, 1991 letter with regard to the Consent Decree for Operable Unit 1. As you know, the Selectmen have no authority to enter into the Consent Decree without the prior approval of the voters of the Town of North Hampton. This shall confirm; however, that we will commence the process under New Hampshire law to convene a Special Town Meeting to be held before January 30, 1992. At this Special Town Meeting we will seek the Town's approval of and authorization to enter into the Consent Decree, Participation Agreement and all other documents necessary to implement the terms of the Consent Decree.

**Very truly yours,**

**TOWN OF NORTH HAMPTON**

  
Richard P. Crowley, Chairman

  
Richard J. Lynch

  
Mary Herbert

/amg

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR

City of Portsmouth  
City of Portsmouth, New Hampshire

\*see below

Date:

9/27/91Name: Kenneth R. MahonyTitle: City Manager, City of Portsmouth, N.H.Address: 1 Junkins Ave. - P.O. Box 628  
Portsmouth, NH 03802-0628

Tel. No.: (603) 431-2000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert P. SullivanTitle: City AttorneyAddress: Portsmouth Municipal Complex1 Junkins Ave. - P.O. Box 628Portsmouth, NH 03802-0628

Tel. No.: (603) 431-2000, Ext. 204

\*The above signature of Kenneth R. Mahony, City Manager of the City of Portsmouth is provided without the authorization of the Portsmouth City Council and therefore is of no legal effect and not binding on the City of Portsmouth unless authorized and ratified by vote of the City Council after public notice and hearing in accordance with the provisions of the Charter of the City of Portsmouth and the laws of the State of New Hampshire. The signature of Mr. Mahony is provided for the sole purpose of evidencing his intent to present this document to the City Council for its consideration.


103

Kenneth R. Mahony

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR R.M. Philbrick Trucking Co., Inc.

Date: September 27, 1991

  
Name: Richard M. Philbrick, Sr.  
Title: Principal  
Address: 354 Central Road  
Rye, NH 03870

Tel. No.: (603) 964-5486

Agent Authorized to Accept Service on Behalf of Above-signed Party:


Name: Same as Above  
Title:  
Address:

Tel. No.:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR George Frisbee, Individually and  
d/b/a Seacoast Trucking and Moving Company

Date: September 26, 1991

  
Name: George Frisbee  
Title:  
Address: 13 Grover Avenue  
Eliot, Maine 03903

Tel. No.: 207-439-1948

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James G. Nocas  
Title: Attorney for George Frisbee  
Address: Mulvey, Nocas and Cornell, PA  
PO Box 478  
Portsmouth, NH 03802-0478

Tel. No.: 603-431-1333

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR BROWNING-FERRIS INDUSTRIES OF  
NEW HAMPSHIRE, INC.

Date: September 27, 1991

Gerald R. Burger  
Name: GERALD R. BURGER  
Title: Vice President  
Address: 757 N. Eldridge  
Houston, Texas 77079

Tel. No.: (713) 870-7820

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert L. Gulley, Esq.  
Title: Attorney  
Address: Sidley & Austin  
1722 Eye Street, N.W.  
Washington, D.C. 20006

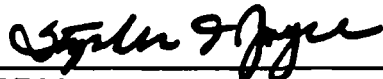
Tel. No.: (202) 736-8013



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Waste Management of New Hampshire, Inc. f\k\a  
SCA Services of New Hampshire, Inc., f\k\a  
Sanitas Waste Disposal of New Hampshire,  
Inc., f\k\a Truk-Away Corporation,  
individually and as successor to Lakes Region  
Disposal Co., Inc. and as alleged successor  
to Coastal Environmental Systems, Inc.

Date: September 26, 1991

  
Name: Stephen T. Joyce  
Title: Authorized Agent  
Address: Waste Management of NA, Inc.  
580 Edgewater Drive  
Wakefield, MA 01880

Tel. No. 617-246-4210

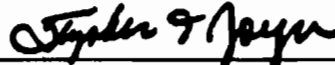
Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: David M. Jones, Esq.  
Title: N.A.  
Address: Kirkpatrick & Lockhart  
One International Place  
Boston, MA 02110  
Tel. No.: (617) 261-3125

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Waste Management of Maine, Inc., f\k\a SCA  
Services of Maine, Inc., f\k\a Sanitas Waste  
Disposal of Maine, Inc., f\k\a Sanitation  
Services, Inc. d/b/a Truk-Away

Date: September 26, 1991



Name: Stephen T. Joyce

Title: Authorized Agent

Address: Waste Management of NA, Inc.  
580 Edgewater Drive  
Wakefield, MA 01880

Tel. No. 617-246-4210

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

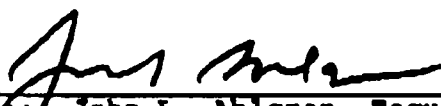
Name: David M. Jones, Esq.  
Title: N.A.  
Address: Kirkpatrick & Lockhart  
One International Place  
Boston, MA 02110  
Tel. No.: (617) 261-3125

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

\* (see below)

FOR the Town of Newington, New Hampshire

Date: September 27, 1991

  
Name: John L. Ahlgren, Esquire  
Title: Attorney for the Town of  
Newington, New Hampshire  
Address: Ahlgren & Perrault, P.A.  
101 Market Street, P.O. Box 1211  
Portsmouth, NH 03802-1211

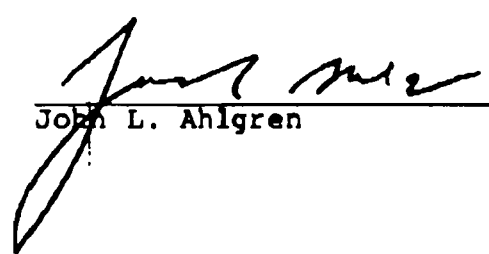
Tel. No.: 603-431-4522

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: John L. Ahlgren, Esquire  
Title: Attorney for the Town of Newington, New Hampshire  
Address: Ahlgren & Perrault, P.A.  
101 Market Street, P.O. Box 1211  
Portsmouth, NH 03802-1211

Tel. No. 603-431-4522

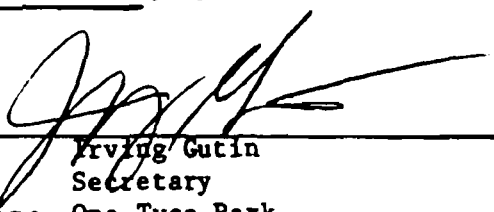
The above signature of John L. Ahlgren, Esquire, Attorney for the Town of Newington, is provided without the formal ratification of the Board of Selectman for the Town of Newington and will remain without legal effect and not binding upon the Town of Newington until and unless authorized and ratified by a vote of the Selectmen after public notice and hearing in accordance with provisions of the Town of Newington ordinances and the Laws of the State of New Hampshire.

  
John L. Ahlgren

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Simplex Wire & Cable Company

Date: September 27, 1991

  
Name: Irving Gutin  
Title: Secretary  
Address: One Tyco Park  
Exeter, New Hampshire 03833

Tel. No.: 603/778-9700

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation System  
Title:  
Address: Two Oliver Street  
Boston, Massachusetts 02109

Tel. No.: 617/482-4420

THE UNDERSIGNED PARTY enters into this Consent Decree in the  
matter of United States v. City of Portsmouth, New Hampshire, et.  
al., relating to the Coakley Landfill Superfund Site.

FOR SM Precision Mfg. Co., Inc.

Date: 9/26/91

*Maureen K. Baldwin*  
Name: Maureen K. Baldwin  
Title: Assist. Clerk  
Address: 10 Forbes Rd.  
Newmarket, N.H. 03857

Tel. No.: 603-659-8323

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:


Name: George A. Hall, Jr.  
Title: Anderson & Kreiger  
Address: 33 Mount Vernon St.  
Boston, Ma. 02108

Tel. No.:

--- UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Cookley Landfill Superfund Site.

FOR SEACOAST VOLKSWAGEN, INC.

Date: SEPTEMBER 27, 1981

  
Name: ROBERT S. CIESYNSKI  
Title: PRESIDENT  
Address: SEACOAST VW, INC.  
180 SPAULDING TURNPIKE  
PORTSMOUTH, NH 03801

Tel. No.: (603) 436-6900

Agent Authorized to Accept Service on Behalf of Above-signed Party:


Name: THOMAS G. FIORE, ESQ.  
Title: MORRISON, MAHONEY & MILLER  
Address: 250 SUMMER ST.  
BOSTON, MA 02210

Tel. No.: (617) 439-7500

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

UNITED TECHNOLOGIES CORPORATION  
Pratt & Whitney  
FOR \_\_\_\_\_

Date: September 26, 1991

  
Name: Thomas C. Baum  
Title: Plant Manager  
Address: Route 1 Wells Road  
North Berwick, ME 03906

Tel. No.: (207) 676-2468

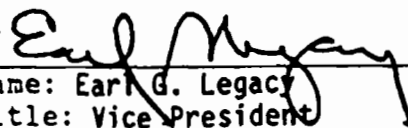
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert A. Argazzi  
Title: Associate Counsel  
Address: Legal Department, Hall Stop 132-12  
Pratt & Whitney  
400 Main Street  
East Hartford, CT 06108  
Tel. No.: (203) 565-4944

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Public Service Company of New Hampshire

Date: 9/27/91

  
Name: Earl G. Legacy  
Title: Vice President  
Address: P.O. Box 330  
Manchester, NH 03105

Tel. No.: (603) 634-2592

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Karen J. Emery, Esquire  
Title: Corporate Counsel, Public Service Company of New Hampshire  
Address: P.O. Box 330 , 1000 Elm Street  
Manchester, NH 03105

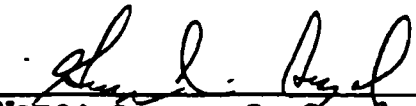
Tel. No.: (603) 634-2964



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Sanel Auto Parts, Inc.

Date: September 27, 1991

  
Name: George I. Segal

Title: President

Address: P.O. Box 1254, 129 Manchester St.  
Concord, NH 03301

Tel. No.: 603-225-4000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert E. Dastin, Esq.

Title: Registered Agent/Secretary


Address: Sheehan Phinney Bass + Green, P.A.  
1000 Elm Street, P.O. Box 3701  
Manchester, NH 03105-3701

Tel. No.: 603-668-0300

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR: POST MACHINERY COMPANY, INC.

DATE: September 26, 1991

  
Name: Allen J. Prochnow  
Title: President  
Address: 15800 W. Overland Dr.  
New Berlin, Wisconsin 53151

Tel. No.: 414-786-2500

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:


Name: Mark Brandenberger, Esq.  
Title: Corporate Counsel  
Address: c/o Hamilton-Stevens Group, Inc.  
251 Walnut Street  
Hamilton, Ohio 45012-5005

Tel. No.: 513-863-1200

Robert Sand

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Pike Associates IncDate: 9/27/91

  
Name: Bruce A. Pike  
Title: President  
Address: 142 Presumpscot St.  
Portland Me. 04103

Tel. No.: 207 772-7404

Agent Authorized to Accept Service on Behalf of Above-signed Party:

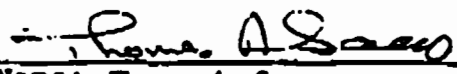
Name: Bruce A. Pike  
Title: President  
Address: 142 Presumpscot St.  
Portland Me. 04103

Tel. No.: 207-772-7404

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR NORTHERN UTILITIES, INC.

Date: September 27, 1991

  
Name: Thomas A. Sacco  
Title: Vice President  
Address: 300 Friberg Parkway  
Westborough, MA 01581

Tel. No.: (508) 836-7000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

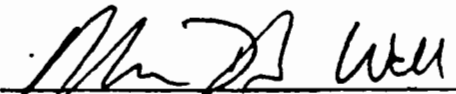
Name: Ann Chisholm (Brickley, Sears & Sorett)  
Title: Esquire  
Address: 75 Federal Street  
Boston, MA 02110

Tel. No.: (617) 542-0896

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

Date: 9/27/91

  
Name: MORRISON PESOTO WEBB  
Title: VICE PRESIDENT and GENERAL COUNSEL  
Address: 125 High Street  
Boston, MA 02193

Tel. No.: (617) 743-7030

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert S. Sanoff, Esq.  
Title: Attorney  
Address: Foley, Hoag & Eliot  
One Post Office Square  
Boston, MA 02109

Tel. No.: 617-482-1390

THE UNDERSIGNED PARTY enters into this Consent-Decree in the  
matter of United States v. City of Portsmouth, New Hampshire, et.  
al., relating to the Cochran Landfill Superfund Site.

FOR NEWMINGTON HIGH MURDER

Date: 9/27/91

Arthur J. [Signature]  
Name: [Signature]  
Title: [Signature]  
Address: 30 SAKEN ST.  
WATERBURY, CT.  
LYNNHURST, MA.

Tel. No.:

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: [Signature]  
Title: [Signature]  
Address: [Signature]

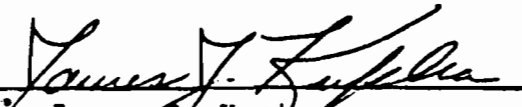
Steven P. Rosenthal, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
(617) 542-6000

Tel. No.:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR MONTGOMERY WARD & CO., INCORPORATED

Date: September 27, 1991

  
Name: James J. Kupka  
Title: Senior Attorney  
Address: One Montgomery Ward Plaza  
Chicago, Illinois 60671

Tel. No.: (312) 467-7494

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: James J. Kupka  
Title: Senior Attorney  
Address: One Montgomery Ward Plaza  
Chicago, Il. 60671

Tel. No.: (312) 467-7494

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR MOBIL OIL CORPORATION

Date: September 30, 1991 R. J. Brinker

Name: R. J. Brinker  
Title: Superfund Response Manager  
Address: P. O. Box 1039  
Princeton, NJ 08543-1039

Tel. No.: 609/531-0527

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:  
Title: Office Manager  
Address: Prentice Hall Corporation System Inc.  
84 State St., 5th floor  
Boston, MA 02109

Tel. No.: (617) 227-9334

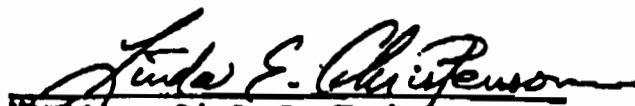


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

K mart's consent is contingent upon the City of Portsmouth, Town of North Hampton, and Town of Newington executing, authorizing and ratifying the Consent Decree and the Participation Agreement.

FOR K mart Corporation

Date: September 27, 1991

  
Name: Linda E. Christenson, Esq.  
Title: Counsel, Kilpatrick & Cody  
Address: 700 - 13th Street, N.W.  
Suite 800  
Washington, D.C. 20005

Tel. No.: (202) 508-5828

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Linda E. Christenson, Esq.  
Title: Counsel, Kilpatrick & Cody  
Address: 700 - 13th Street, N.W.  
Suite 800  
Washington, D.C. 20005

Tel. No.: (202) 508-5828

--- UNDERSIGNED PARTY enters into this Consent Decree in the  
matter of United States v. City of Portsmouth, New Hampshire, et.  
al., relating to the Coakley Landfill Superfund Site.

FOR GARY W. BLAKE, One.

Date: Sept 26, 1991

GARY W. BLAKE  
Name: GARY W. BLAKE  
Title: PRES.  
Address: 58 PORTSMOUTH AVE  
EXETER NH 03833

Tel. No.: 603-778-0563

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: Stephen C. Hermans, Esquire  
Title: Attorney  
Address: HOLLAND, DONOVAN, BECKETT & HERMANS  
151 Water Street, P.O. Box 1090  
Exeter, New Hampshire 03833

Tel. No.: (603) 772-5956

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR L. J. Quinn & Co., Inc.

Date: 9/26/91 Edward L. Quinn  
Name: Edward L. Quinn  
Title: President  
Address: P.O. Box 158  
135 Folly Mill Road  
Seabrook, NH 03874  
Tel. No.: 1-603-474-7177

Agent Authorized to Accept Service on Behalf of Above-signed Party:

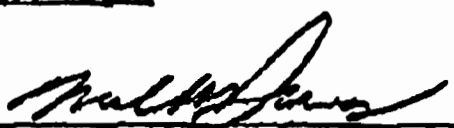
Name: Martin C. Pentz, Esq.  
Title: Attorney  
Address: Wutter, McClennen & Fish  
One International Place  
Boston, MA 02110

Tel. No.: 617-439-2000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR JET-LINE SERVICES, INC.

Date: September 27, 1991

  
Name: Neal M. Drawas  
Title: President  
Address: Jet-Line Services, Inc.  
P. O. Box 180  
441 R Canton Street  
Stoughton, MA 02072  
Tel. No.: (617) 344-2510

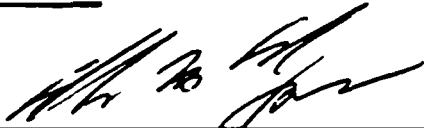
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Neal M. Drawas  
Title: President  
Address: JET-LINE SERVICES, INC.  
8 Progress Drive  
Dover, NH 03820  
Tel. No.: (603) 748-5735

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR GTE PRODUCTS CORPORATION

Date: 9/27/91

  
Name: Dr. Allen M. Alper  
Title: Vice President & General Manager  
Address: GTE Chemical & Metallurgical Division  
Hawes Street  
Towanda, Pennsylvania 18848

Tel. No.: (717) 265-2121

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Custom Pools, Inc.

Date: 52 P.T. 27, 1991 Eugene N. Short  
Name: Eugene N. Short  
Title: President  
Address: Custom Pools, Inc.  
123 North River Road  
Newington, NH 03801  
Tel. No.: 603-431-7800

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Beatrice L. Short  
Title: Secretary/Registered Agent  
Address: Custom Pools, Inc.  
123 North River Road  
Newington, NH 03801  
Tel. No.: 603-431-7800

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR BOOTH FISHERIES CORPORATION

Date: 9/27/91 W.S. Lipsman  
Name: W.S. LIPSMAN  
Title: VICE PRESIDENT  
Address: THREE FIRST NATIONAL PLAZA  
SUITE 4600  
CHICAGO, IL 60602  
Tel. No.: 312/558-8538

Agent Authorized to Accept Service on Behalf of Above-signed Party:

SETH D. JAFFE  
Name: FOLEY HOAG & ELIOT  
Title: ONE POST OFFICE SQUARE  
Address: BOSTON, MA 02109

Tel. No.: 617/482-1390

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR Eric Scientific Company

Date: \_\_\_\_\_

Russell V. Randle

Name: Russell V. Randle, Esq.  
Title: Outside Counsel for Eric Scientific  
Address: Patton, Boggs & Blow  
2550 M Street, N.W.  
Washington, D.C. 20009

Tel. No.: (202) 457-5282

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: R. Jeffrey Harris, Esq.  
Title: Vice-President, General Counsel & Secretary  
Address: Sybron Corporation  
411 E. Wisconsin Avenue, 24th Floor  
Milwaukee, Wisconsin 53202

Tel. No.: (414) 274-6579